

5/19/04

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04CV10632 MEL

MARY B. SMITH,)
Plaintiff,)
)
V.)
)
DAVID C. NICHOLSON, Trustee of the)
D.J.J. Realty Trust,)
DOMINIC M. SAWICKI, Trustee of the)
Dominic M. Sawicki Nominee Trust and)
CAROL ANN WHITNEY and)
GLENN WHITNEY,)
Defendant(s))

**DEFENDANTS CAROL ANN WHITNEY AND GLENN WHITNEY ANSWER TO
PLAINTIFF'S COMPLAINT AND JURY DEMAND****PRELIMINARY STATEMENT**

1. The defendants Carol Ann Whitney and Glenn Whitney are not required to answer paragraph 1 of the plaintiff's complaint.

JURISDICTION

2. The defendants Carol Ann Whitney and Glenn Whitney are without sufficient information to neither admit nor deny the averments contained in paragraph 2 of the plaintiff's complaint.

PARTIES

3. The defendants Carol Ann Whitney and Glenn Whitney are without sufficient information to neither admit nor deny the averments contained in paragraph 3 of the plaintiff's complaint.
4. The defendants Carol Ann Whitney and Glenn Whitney admit that they are residents of Harwich, Massachusetts but are without sufficient information to neither admit nor deny the averments contained in paragraph 4 of the plaintiff's complaint.

COUNT ONE

5. The defendants Carol Ann Whitney and Glenn Whitney deny the averments contained in paragraph 5 of the plaintiff's complaint.
6. The defendants Carol Ann Whitney and Glenn Whitney deny the averments contained in paragraph 6 of the plaintiff's complaint.
7. The defendants Carol Ann Whitney and Glenn Whitney deny the averments contained in paragraph 7 of the plaintiff's complaint.
8. The defendants Carol Ann Whitney and Glenn Whitney are not required to answer paragraph 8 of the plaintiff's complaint.

COUNT TWO

9. The defendants affirm, re-allege and incorporate herein their responses to paragraphs 1-8 of this complaint.
10. The defendants Carol Ann Whitney and Glenn Whitney deny the averments contained in paragraph 10 of the plaintiff's complaint.
11. The defendants Carol Ann Whitney and Glenn Whitney are not required to answer paragraph 8 of the plaintiff's complaint.

COUNT THREE

12. The defendants affirm, re-allege and incorporate herein their responses to paragraphs 1-11 of this complaint.
13. The defendants Carol Ann Whitney and Glenn Whitney deny the averments contained in paragraph 10 of the plaintiff's complaint.

WHEREFORE, the defendants Carol Ann Whitney and Glenn Whitney pray this court dismiss the plaintiff's complaint and enter judgment for the defendants Carol Ann Whitney and Glenn Whitney, which includes an award of costs to the defendants, Carol Ann Whitney and Glenn Whitney.

AFFIRMATIVE DEFENSES

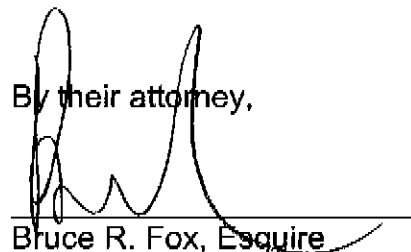
1. The complaint fails to state a claim against the defendants for which relief can be granted.

2. The defendants says that the injuries or damages alleged were caused in whole or in part by the plaintiff's own negligence, or the negligence of the person in whose care and custody the plaintiff was at the time of the accident alleged in the plaintiff's complaint.
3. The defendants say that the acts or omissions alleged in plaintiff's complaint to be negligent were committed, if at all, by a person or persons for whose conduct the defendants were not legally responsible.
4. Defendants say that the injuries or damages alleged were caused in whole or in part by the conduct of the plaintiff and/or the plaintiff's agents, servants or employees, which conduct violated the various laws, statutes, ordinances and regulations governing the conduct of the parties at the time said injuries or damages were sustained.
5. In the event the defendants are found negligent, which the defendants deny, then the defendants say that the plaintiff was comparatively negligent and that said negligence was greater than that of the defendants, barring plaintiff's recovery.
6. The defendants state the plaintiff failed to give notice under M.G.L. c 84, Sections 18 and 21 and the defendants were thereby prejudiced.
7. The defendants says that if it shall appear at the trial of this matter that the plaintiffs sustained injuries and/or damages as alleged in the complaint, then said injuries and/or damages were the result of the negligence of the plaintiff, which were the cause or a contributing cause of said injuries and/or damages.
8. The defendants say that there has been an insufficiency of process.
9. The defendants say that there has been an insufficiency of service of process.
10. The defendants say that the plaintiff has not commenced this action within the time allowed by statute for the commencement of such actions.
11. The defendants deny each and every paragraph, averment, item and matter set forth in plaintiff's complaint, which has not been specifically admitted.

THE DEFENDANTS DEMAND A TRIAL BY JURY ON ALL ISSUES.

Date: 5/3/04

By their attorney,



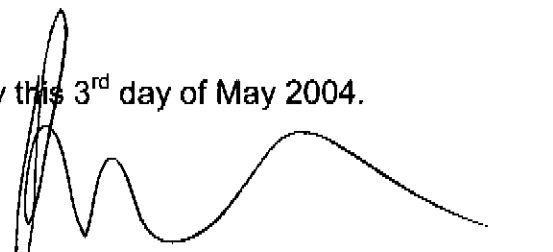
Bruce R. Fox, Esquire
BBO#: 176320
LAW OFFICE OF BRUCE R. FOX
27B Midstate Office Park
Auburn, MA 01501

CERTIFICATE OF SERVICE

I, Bruce R. Fox, attorney for the above named defendants, do hereby certify that I caused a copy of the within DEFENDANTS CAROL ANN WHITNEY AND GLENN WHITNEY ANSWER TO PLAINTIFF'S COMPLAINT AND JURY DEMAND, to be served upon each named party by mailing a copy of same, postage prepaid, to each party's counsel of record, namely:

Alfred J. Smith, Esquire
706 Bedford Street
Stamford, CT 06901

Signed under the pains and penalties of perjury this 3rd day of May 2004.



Bruce R. Fox, Esquire